

REMARKS

Claims 24-29 and 32-44 stand newly rejected under 35 U.S.C. §103(a) over US patent No. 6,378,069 (hereinafter Sandler) in view of US patent No. 6,470,378 (hereinafter Tracton). Applicant respectfully requests reconsideration of the new rejections in view of the following remarks.

MPEP §2143.04 provides that to establish *prima facie* obviousness of a claimed invention, all the claims limitations must be taught or suggested by the prior art. All words in a claim must be considered for judging the patentability of the claim against the prior art. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending there from is nonobvious.

Claim 24 is directed to a data communication system for updating software stored in a storage device of a first computer. Claim 24 in part recites a control software configured to compare a respective data rate provided by respective ones of a plurality of transmission media available for updating software. The control software is further configured to select one of the plurality of transmission media based on a result of the data rate comparison.

The Examiner correctly acknowledges that Sandler fails to describe or suggest each of the structural and/or operational relationships of the claimed invention. More particularly, the Examiner acknowledges that Sandler fails to disclose or suggest a control software configured to compare a respective data rate provided by respective ones of a plurality of transmission media available for updating software . . . to select one of the plurality of transmission media based on a result of the data rate comparison.

The Office Communication then applies Tracton to purportedly remedy the acknowledged deficiencies of Sandler regarding the claimed invention. However, as discussed in greater detail below, Tracton fails to remedy the deficiencies of Sandler regarding the claimed invention. Consequently, the Sandler/Tracton combination fails as a *prima facie* combination for sustaining a §103 rejection of the claimed invention and the rejections should be withdrawn.

Tracton is directed to servicing a client having specific computing capabilities in a client-server environment. A request from the client is satisfied based on the specific computing capabilities of the client. See Abstract of Tracton. See also Summary of Tracton at col. 3. For example, Tracton describes that a client with insufficient computing resources may not be able to process complex video data. See Tracton at col. 2 , line 29 et. seq. Accordingly, Tracton

describes at col. 5, line 5 et. seq. that data sent to the client is configured based on the computing capabilities of the client. For example, the data may have send at a slower rate or may be send in simpler encoding format to allow the computing resources of the client to keep up with the received data.

One skilled in the art will appreciate that the problem purportedly solved by Tracton has little to do with the claimed invention. Firstly, one skilled in the art would appreciate that identifying the specific computing capability of a given client (Tracton col. 3, line 58) is inapposite to control software configured to compare a respective data rate provided by respective ones of the plurality of transmission media available for updating software. Secondly, one skilled in the art would further appreciate that providing capability-tailored data (Tracton col. 4, line 12) is inapposite to configuring the control software to select one of the plurality of transmission media based on a result of the data rate comparison. The stated object of Tracton is the ability to tailor the data transmitted to a client in order to meet the specific computing capabilities of the client. One skilled in the art will appreciate that the claimed invention has virtually no logical nexus to the stated object of Tracton.

In view of the foregoing considerations, the Examiner has not appropriately demonstrated, as required by the applicable statutory requirements, that Tracton in fact remedies the acknowledged deficiencies of Sandler regarding the claimed invention, and consequently, the Sandler/Tracton combination fails to teach each of the structural and/or operational relationships of the claimed invention. Thus such a combination fails as a *prima facie* combination for sustaining a §103 rejection of the claimed invention and the rejection of claim 24 and claims depending there from should be withdrawn.

Independent claim 43 is directed to a first computer in a data communication system and independent claim 44 is directed to a method for updating software. Since the Sandler/Tracton combination, as discussed above, fails to describe or suggest each of the structural and/or operational relationships of the claimed invention, Applicant respectfully requests that the Examiner also withdraw the Section 103 rejections of claims 43 and 44.

Serial No. 10/527,433
Atty. Doc. No. 2002P10529WOUS

Conclusion

It is respectfully submitted that each of the claims pending in this application recites patentable subject matter and it is further submitted that such claims comply with all statutory requirements and thus each of such claims should be allowed.

The commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: Nov. 19, 2008

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